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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,174	02/20/2004	Malcolm Thomas Hammond	263593.00002	4503

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CANADA

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,174

Applicant(s)

HAMMOND, MALCOLM THOMAS

Examiner

Jack H. Morgan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

1. Claims 1-3, 5-13 and 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Preston (WO 03/064214A1). Preston discloses a bicycle carrier (fig 1) with a supporting member (26) mountable to a vehicle (11) having an upper bar (22) with a cradle (20) capable of receiving a bicycle fork crown (as the cradle bears the weight of the bike by the fork and fork crown) such that the bicycle will be supported from the fork crown, generally vertically.

In regards to claim 2, the supporting member (26) is generally vertical with a horizontal upper bar (22) upon which the cradle is mounted.

In regards to claim 3, the supporting member has means to attach to a vehicle hitch (28).

In regards to claim 5, there are a plurality of cradles mounted on the upper structure (fig 2).

In regards to claim 6, when a bicycle is hung from an outer cradle of Preston's invention, and then tied to the supporting member (Page 4, lines 21-23), the bicycle is then capable of being at an angle other than perpendicular to the handlebars and fork

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crown by tying the rear wheel to the support member, thus moving the lower portion of the bicycle towards the support member.

In regards to claim 7, the cradle includes tie down means to secure a bicycle fork (39) (Page 5, lines 7-8).

In regards to claims 8-11 and 13, the limitations have been set forth above.

In regards to claim 12, the horizontal support is generally parallel to the rear end of the vehicle.

In regards to claim 15, Preston discloses a cradle (20) comprising two pairs of tines (58 and 62, 60 and 64) such that the fork crown is between the two pairs.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Preston (WO 03/064214A1) in view of Hansen (US 6,834,786). Preston discloses all the limitations of the claim except for a plurality of bicycles with said bicycle fork crowns and handlebars at an angle other than parallel to said horizontal support member.

Hansen discloses a bicycle carrier (fig 2) with a cradle (30) that is offset at an angle other than parallel from a horizontal bar (18) so as to allow more bikes to be

placed in close proximity, in order to avoid handlebar interference (Col 2, lines 34-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to offset the cradle of Preston from his horizontal cradle support in order to prevent handlebar interference and be able to attach more bikes closer together to his bicycle carrier.

3. Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preston (WO 03/064214A1) in view of Despain (US 5,526,971). Preston discloses all the limitations of the claims, and also discloses means for securing the rear wheel of the bicycle to the support member (Page 4, lines 21-23), but does not disclose the means being a second bar (or stabilizer bar).

Despain discloses a similar vehicle mounted bicycle rack (Fig 1) where the bicycles are vertically suspended from the fork and fork crown, and further where the rear wheel is secured to a second stabilizing bar (22) in order to prevent the lower portion of the bicycle from swinging. It would have been obvious to one of ordinary skill in the art at the time of invention to create the bicycle rack of Preston with a stabilizing bar as taught by Despain in order to prevent the lower portion of the bicycle from swinging.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Preston (WO 03/064214A1) in view of Despain (US 5,526,971) as applied to claims 4 and 16 above, and further in view of Johansson (DE 3,890,700). Preston as modified above

discloses all the limitations of the claim except for the stabilizer bar further comprising a hook to hold the rear tire in place, instead disclosing an optional band to hold the tire in place.

Johansson discloses a bicycle rack (Fig 1) having a hook portion (41 See Fig 2-5) in order to easily engage the wheel to the stabilizer bar, and adjust for different size wheels (via 53a-c). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the bike rack of Preston as modified above with the hook of Johansson in order to easily and adjustably secure the rear wheel of a bicycle to the stabilizer bar.

Response to Arguments

5. Applicant's arguments, see Page 5, line 7-15, filed July 27, 2007, with respect to claims 1 and 8 being anticipated by Moore (GB 2327655 A) have been fully considered and are persuasive. The 102(b) rejection of the previous office action has been withdrawn.

6. Applicant's remaining arguments filed July 27, 2007 have been fully considered but they are not persuasive. Applicant argues that Preston provides a cradle, due to the closed nature of its triangles, which is incapable of receiving a fork crown. Examiner first notes that claim 8 does not possess the language "receiving" only claiming that the cradle "supports" a bicycle fork crown. Moreover, the definition of receive is "to bear the weight or force of" (Webster's II New Riverside University Dictionary, 1994), and as such, the cradle of Preston receives the fork crown.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chimenti et al. (US 5,211,323), Hedeem (US 5,558,261) and Low et al. (US 5,871,131).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented

claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
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NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER